

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

HENRY VALDEZ,)	CASE NO. 1:15 CV 2702
Petitioner,)	JUDGE JAMES S. GWIN
v.)	OPINION AND ORDER
WARDEN, MARION CORRECTIONAL)	
INSTITUTION,)	
Respondent.)	

On December 28, 2015, petitioner *pro se* Henry Valdez, an inmate at the Marion Correctional Institution, filed the above-captioned petition for writ of habeas corpus under 28 U.S.C. § 2254. Valdez challenges his convictions, pursuant to a guilty plea, of rape and gross sexual imposition. For the reasons stated below, the petition is denied and this action is dismissed.

A federal court may entertain a habeas petition filed by a person in state custody only on the ground that he is in custody in violation of the Constitution, laws, or treaties of the United States. 28 U.S.C. § 2254(a). In addition, petitioner must have exhausted all available state remedies. 28 U.S.C. § 2254(b).

As Grounds for the petition, Valdez asserts: 1) the trial court lacked subject matter jurisdiction, denying him due process and equal protection; 2) the trial court did not advise him of his appeal rights, denying him due process and equal protection; and, 3) the trial court sentenced him without requisite findings under Ohio law, denying him due process and equal protection. It is apparent on the face of the petition that Valdez has an action pending in the Ohio Court of

Appeals in which he raises the issues set forth in Grounds 2 and 3. Thus, without regard to the potential merits of these Grounds, Valdez has not yet exhausted his state court remedies. The petition is thus premature.

Accordingly, this action is dismissed without prejudice pursuant to Rule 4 of the Rules Governing Section 2254 Cases. Further, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and that there is no basis on which to issue a certificate of appealability. Fed.R.App.P. 22(b); 28 U.S.C. § 2253.

IT IS SO ORDERED.

Dated: January 13, 2016

s/ *James S. Gwin*

JAMES S. GWIN

UNITED STATES DISTRICT JUDGE